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In the

Supreme Court of the United States

OCTOBER TERM, 1959

No. 207

WILLIAM J. ROCHELLE, JR., Trustee in Bankruptcy of Major Appliance Company, Inc.,
Petitioner,

v.

CITY OF DALLAS,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF OF PETITIONER TO BRIEF IN OPPOSITION

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1. Respondent opposes the petition for writ of certiorari solely on the ground that the decision below was assertedly correct. Respondent recognizes, as it must, the importance of the question presented and of an authoritative interpretation thereof by this Court (Ret., pp. 6-7) Respondent's arguments are addressed solely to the merits of this important question which we respectfully urge the Court to decide.

We will present fully the merits of the question raised in the petition at the appropriate time if review is undertaken

by the Court. Respondent's Brief, however, raises an issue which is not covered in the petition and which warrants notice at this stage of the proceedings.

2. Subdivision b of § 67 of the Bankruptcy Act (Brief in Opp., p. 2) is in no way involved in this case. In the first place, §67b provides a method of perfecting liens *after* bankruptcy, whereas it is universally recognized that Dallas' lien is perfected beginning January 1 of each year. *In re Brannon*, 62 F. 2d 959 (5th Cir. 1933). Further, §67c(2) specifically condemns statutory liens for debts owing to any state or subdivision thereof, "the provisions of subdivision (b) of this section to the contrary notwithstanding." Such liens are invalidated by §67c(2), whether "perfected" or not, if such liens cover personal property, and if they are not accompanied by possession, levy, sequestration or distraint.

3. For the same reason, non-bankruptcy cases and pre-1952 cases holding Dallas' lien good with no action whatsoever by the City (Brief in Opp., pp. 2-3) lack relevance.

Respondent flaunts the effect of the City's lien as attaching even before the taxes are assessed (Brief in Opp., p. 3). Respondent thus demonstrates the character of its lien as being precisely within a "mischief" which even the Court of Appeals found it to be the Congressional purpose to correct. For example, in *City of Dallas v. Crippen*, 171 F. 2d 526 (5th Cir. 1949), the following sequence of events gave rise to the lien asserted by the City:

January 1, 1947—The lien attached under the Dallas Home Rule Charter.

February 26, 1947—Adjudication of bankruptcy.

April 1, 1947—Return due.

May 16, 1947—Assessment of the tax.

September 23, 1947—Assessment approved by City Council (and the amount of the tax for the first time became known).

In the instant case, the lien arose in this sequence (R. 22-23):

January 1, 1956—The lien attached under the Dallas Home Rule Charter.

August 21, 1956—Involuntary petition filed.

September 4, 1956—City Council levied 1956 ad valorem taxes (and the amount of the tax for the first time became known).

It thus appears that in the annual eight-month period prior to September, until assessments are approved and the taxes enacted, Dallas' lien floats expectantly, later to attach retroactively for the enforcement of taxes in the meantime not susceptible of ascertainment.

Such a "hidden and secret" lien is squarely within the purpose and the terms of §67c(2) of the Act.

CONCLUSION

The petition raises a question which will continue to arise in the administration of bankruptcy estates until resolved by this Court. The result affects every state and local taxing authority in the Nation. Whether the implied exemption fashioned for them by the court below is justified, is a question of such importance as to require plenary considera-

tion with briefs on the merits and oral argument for its resolution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Marvin S. Sloman, counsel for William J. Rochelle, Jr., Trustee in Bankruptcy of Major Appliance Company, Inc., Petitioner herein, and a member of the bar of the Supreme Court of the United States, hereby certify that on August 10, 1959, I served a copy of the foregoing Reply Brief of Petitioner on the Respondent herein by depositing the same in a United States mail box with first class postage prepaid, addressed to H. P. Kucera, Esq., its counsel of record, at his post office address, 501 City Hall, Dallas, Texas.

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